

Notice of Allowability

Application No.

10/538,998

Examiner

Yong Chu

Applicant(s)

DING ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 1/19/2007.
2. ☒ The allowed claim(s) is/are 1,2,9-14,21-26,33-38,45-50, and 57-60.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

DETAILED ACTION

Claims 3-8, 15-20, 27-32, 39-44, and 51-56 have been canceled by the Amendment filed on 19 January 2007. Therefore, claims 1,2, 9-14, 21-26, 33-38, 45-50, and 57-60 are pending.

Claims 1, 2, 9-14, 21-26, and 33-36 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(b), claims 37-50, and 57-60 directed to the process of using the allowable product, previously withdrawn from consideration as a result of a restriction requirement, claims 37-50, and 57-60 hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because a claimed invention previously withdrawn from consideration under 37 CFR 1.142 has been rejoined, **the restriction requirement groups as set forth in the Office action mailed on 13 April 2006 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Response to Amendment

The Amendments by Applicants' representative Cynthia M. Bouchez dated on 19 January 2007 has been entered.

Response to Arguments

Status of the Claims

Applicant's argument over the status of the claims is moot after scope of the invention has been re-drawn after a telephonic interview with Applicant's representative Attorney Cynthia M. Bouchez on 29 December 2006, and agreement has been reached. See the interview summary. Therefore, claims 1,2, 9-14, 21-26, 33-38, 45-50, and 57-60 are examined on the merits.

Rejection of claims 1 and 2 under 35 U.S.C. §102(b)

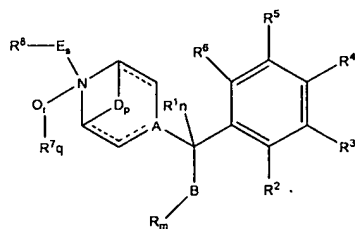
Applicant's argument over the rejection of claims 1 and 2 filed on 28 August 2006 on the ground that **B** in Formula I of instant application is not $-\text{OC}(=\text{O})$ when $m=1$ and $n=1$, which is different from the Rorig compound (U.S. Patent No. 3,100,775) cited by Office is found persuasive. The rejection of claims 1 and 2 under 35 U.S.C. §102(b) has been withdrawn.

Rejection of claims 1 and 2 under 35 U.S.C. §103(a)

The rejection of claims 1 and 2 under 35 U.S.C. §103(a) has also been withdrawn after considering withdrawing the rejection of claims 1 and 2 under 35 U.S.C. §102(b), and lack of related utility with the cited prior art.

Reasons for Allowance

The present invention is directed to a compound of the formula (I)



, a N-oxides, and agriculturally-acceptable salts thereof, a

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composition containing said compounds and a method of using said composition to control tobacco budworm wherein: **m** and **n** are 1; **q** is 0; **r** is 0 or 1; **s** is 1; **p** is 0;

A is selected from C and -CH forming a six-membered azine ring selected from piperidine, 1,4-dihydropyridine, and 1,2,5,6-tetrahydropyridine;

R¹ is H; **R**² – **R**⁶ is defined as in claim 1;

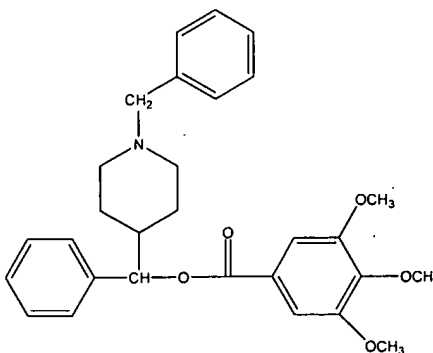
B is -O, -OCH₂, or -OC(=O)NR¹⁵, wherein **R**¹⁵ is H;

R is a substituted phenyl, wherein substituents **R**¹⁷, **R**¹⁸, **R**¹⁹, **R**²⁰, and **R**²¹ are defined in claim 1;

R⁸ is a substituted phenyl, wherein substituents **R**²², **R**²³, **R**²⁴, **R**²⁵, and **R**²⁶ are defined in claim 1;

E is -(CR²⁷R²⁸)_x-(CR²⁹R³⁰)_y-, wherein **x** is 1, and **y** is 0, wherein substituents **R**²⁷ – **R**³⁰, are defined in claim 1.

The closest prior art of record is US Patent No. 3,100,775 (Roring et al.). Roring



et al. disclose a compound of formula

. The prior art

compound is patentably distinct from the instantly claimed compounds of formula (I) in claim 1, because the prior art compound has **B** as -OC(=O) group, patentably distinct from the instantly claimed compounds wherein **B** is -O, -OCH₂, or -OC(=O)NR¹⁵,

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wherein R^{15} is H. The term "second compounds" is defined in paragraphs [0177]-[0179] of the specification.

The claims of method of using are supported by the data disclosed in the specification.

Therefore, claims 1,2, 9-14, 21-26, 33-38, 45-50, and 57-60 are allowed.

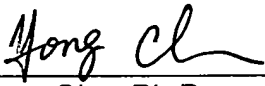
Telephone Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yong Chu whose telephone number is 571-272-5759. The examiner can normally be reached on 7:00 am - 3:30 pm EST.

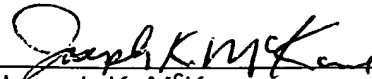
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on 571-272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in cursive script, appearing to read "Yong Chu", written over a horizontal line.

Yong Chu, Ph.D.
Patent Examiner
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A handwritten signature in cursive script, appearing to read "Joseph K. McKane", written over a horizontal line.

Joseph K. McKane
Supervisory Patent Examiner
Art Unit 1626